IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.17801 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITHALBHAI MAGANBHAI PATEL

Versus

VC TRIVEDI OR HIS SUCCESSOR IN OFFICE

Appearance:

1. Special Civil Application No. 17801 of 2003

MR AMAR D MITHANI for Petitioner No. 1

MR JASWANT K SHAH for Petitioner No. 1

MR KUNJAL PANDYA AGP for Respondent Nos. 1-2

..... for Respondent No. 3

MR PK JANI for Respondent No. 3/1

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. The petitioner had purchased the land in question by a registered Sale Deed dated 16-04-1963. Even in the Record of Rights the entry was also mutated on 06-03-1990 vide Entry No.738. During the RTS proceedings the authorities came to know that the aforesaid transaction

is in breach of provision of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Act') and, therefore, proceedings were initiated by the Prant Officer, Mehsana by issuing a show-cause notice dated 17-01-2000. The Prant officer, Mehsana by its order dated 28-09-2001 referred the matter to the Collector for its decision as, according to him, prior permission under Section 30(1)B was not obtained in view of the fact that almost a period of 37 years have passed and, therefore, to take a proceedings under Section 9 would be taking an action after unreasonable period. Thereafter, the Prant Officer, Mehsana, on instructions given by the Collector, proceeded further with the inquiry and ultimately by order dated 31-05-2003 declared the sell invalid with regard to the land in question for which the entry was made on 06-03-1990 as the same is in breach of the provisions of the Act.

2. Being aggrieved and dissatisfied with the said order dated 31-05-2003 the petitioner, original purchaser, preferred a Revision Application before the learned Joint Secretary, Revenue Department (Appeals) which was numbered as Revision Application No.4 of 2003. The learned Joint Secretary by its judgement and order dated 29-09-2003/18-10-2003 dismissed the said Revision Application and confirmed the order passed by the Dy. Collector, Mehsana dated 31-05-2003.

3. Being aggrieved and dissatisfied by the said judgement and order passed by the learned Joint Secretary dated 29-09-2003/18-10-2003 passed in Revision Application No.4 of 2003 dismissing the revision application and confirming the order passed by the Dy. Collector dated 31-05-2003, the present petition is preferred under Article 227 of the Constitution of India.

4. Mr.Mithani, learned advocate appearing on behalf of the petitioner, has mainly submitted that the judgement and order passed by the learned Joint Secretary is a non-reasoned order. While dismissing the Revision Application, the learned Joint Secretary has not considered the contentions which are raised by the petitioner in the said revision application to the effect that there is no breach of provisions of the Act and there is no breach of fragmentation Act. Even also it is found that there is any provisions of law and prior permission was required, they are ready and will to take permission by paying penalty and, therefore, requested that the matter may be remanded.

5. Mr.Jani, learned advocate for the private

respondent, has further tried to support the order passed by the revisional authority. However, from the judgement and order impugned in the petition he could not point out that the judgement and order passed by the revisional authority is a reasoned order. Except narrating the submissions on behalf of the parties as such no reasons have been given by the learned Joint Secretary while rejecting the application.

6. Mr.Kunjal Pandya, learned A.G.P., has also supported the order passed by the learned Joint Secretary. He has submitted that in view of the fact that there is a breach of provisions of the Act and prior permission was not taken, the authorities were justified in declaring the sell invalid and for which powers can be exercised in any point of time as the sale transaction itself is nullity.

7. Heard the learned advocates for the respective parties. Without going into the merits of the case and the other arguments, the present petition is required to be allowed only on the short ground that the impugned order passed by the learned Joint Secretary is a non-reasoned order. From the bare reading of the impugned order it seems that except narrating the contentions and submissions made on behalf of the parties, no reasons have been assigned while rejecting the Revision Application and confirming the order passed by the Dy. Collector. The contentions which are raised on behalf of the petitioner in Revision Application are not dealt with and not considered at all. The argument on behalf of the petitioner to the effect that there are no breach of the provisions of the Act and also there is no breach of Fragmentation Act at all and/or the argument that even if it is found that prior permission was required, they are ready and willing to take permission after payment of penalty, has not been dealt with at all. When the order passed by the authorities are subject to scrutiny by the higher Court / higher forum then the revisional authority are bound to give reasons. The same view is taken by the Hon'ble Supreme Court in the case of NOTIFIED AREA COMMITTEE Vs. ADDITIONAL DIRECTOR, CONSOLIDATION & ORS., (2002) 10 SCC 87 which is as under:

> "..... reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the superior Court"

8. Considering the aforesaid observation made by the Apex Court in the aforesaid facts and considering the impugned order passed by the learned Joint Secretary

while rejecting the Revision Application and confirming the order passed by the Dy. Collector that no reasons whatsoever is given and all the contentions which are raised by the petitioner in the Revision Application are not dealt with.

9. In view of the aforesaid fact, the petition is required to be allowed and the same is partly allowed. The impugned order passed by the Joint Secretary, Revenue Department (Appeals), Gujarat Government, Ahmedabad dated 29-09-2003/18-10-2003 passed in Revisional Application No.4 of 2003 is hereby quashed and set aside. The matter is remanded to the learned Special Secretary for deciding the same on merits and in accordance with law and with a further direction that after considering all the submissions which are raised by the parties pass a speaking and reasoned order. This exercise is to be done within a period of three months from the date of receipt of this order. Rule is made accordingly to the aforesaid extent. No order as to costs.

Till the Revision Application is heard and disposed of by the revisional authority, the impugned order passed by the Dy. Collector, Mehsana dated 31-05-2003 is stayed. Sd/-

[M.R.SHAH, J]

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'Bhavesh'